

HEARINGS OVERVIEW

Board of Parole Hearings



Consultation

Consultation

- Previously Documentation Reviews (Documentation Hearings)
- No decision is made affecting the parole date.
- Occurs before the inmate is eligible for parole suitability hearings.

Former Timing of Doc. Reviews

PC 3041(a)

15 CCR 2269.1

The Board of Parole Hearings shall meet with each inmate during **the third year of incarceration** to review the inmate's file, make recommendations, and document activities and conduct pertinent to granting or withholding post conviction credit...

Timing As of January 1, 2014

PC 3041(a) as
amended by
Senate Bill 260
(Chapter 312)

The Board shall meet with each inmate during the sixth year prior to the inmate's minimum eligible parole release date **(five years before the initial suitability hearing)** to conduct an initial consultation.

Participants and Purpose

Participants

- A commissioner or a deputy commissioner or both
- The inmate

Purpose

- Review and document the inmate's conduct and activities
- Meet with the inmate
- Give him information about the parole hearing process
- Make individual recommendations for work, programming, and behavior

Preparation for later hearings

PC 3041(a)
as amended
by Senate Bill
260

The purposes are reviewing and documenting the inmate's activities and conduct pertinent to both parole eligibility and to the granting or withholding of post conviction credit.

Preparation for later hearings

PC 3041(a)
as amended
by Chapter
312 (Senate
Bill 260)

During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior.

Prisoner's Rights (15 CCR 2245-55)

- Notice of hearing / Review of Central File / Respond to contents / Present relevant documents
- Attend and speak on his or her own behalf
- Impartial Commissioner or Deputy Commissioner
- Assistance (ADA, staff, language interpreter)
- Written recommendations: Within 30 days, the board shall issue its positive and negative findings and recommendations to the inmate in writing.
(PC 3041(a), as modified by Ch. 312, SB260)



Suitability Hearings

Timing of Suitability Hearings

Initial Parole Consideration

- Held one year before the inmate reaches his minimum eligible parole date (MEPD)

Penal Code § 3041(a)

Subsequent Parole Consideration

- Hearing date depends on the denial length imposed at the previous hearing

Penal Code § 3041(b)(3)

De Novo Hearing

Penal Code
3041.5 (c)

The Board shall conduct a parole hearing as a de novo hearing.

Findings made and conclusions reached in a prior parole hearing shall be considered but are not binding upon subsequent parole hearings.

Legal Standard

In re Rosenkrantz

15 CCR 2402(b)

In making a parole eligibility decision, the hearing panel must not act arbitrary or capricious and must consider “all relevant, reliable information available.” (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 670.)

Fundamental Consideration

In re Lawrence

PC 3041

15 CCR 2281

15 CCR 2402

The fundamental consideration in making a parole eligibility decision is the potential threat to public safety upon an inmate's release. Accordingly, a denial of parole must be based upon evidence in the record of the inmate's current dangerousness. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205-1206.)

Is the inmate suitable for parole

- Does the inmate pose a current risk to public safety such that further incarceration is needed?

In re Lawrence (2008) 44 Cal. 4th 1181

- This is an individualized inquiry.

In re Shaputis (2008) 44 Cal.4th 1241, 1254.

Case Law

- ***In re Rosenkrantz*** (2002) 29 Cal.4th 616
- ***In re Dannenberg*** (2005) 34 Cal. 4th 1061
- ***In re Lawrence*** (2008) 44 Cal. 4th 1181
- ***In re Shaputis*** (2008) 44 Cal.4th 1241
- ***In re Prather*** (2010) 50 Cal.4th 238
- ***Swarthout v. Cooke*** (2011) 131 S.Ct. 859
- ***In re Shaputis*** (2011) 53 Cal.4th 192
- ***In re Vicks*** (2013) 56 Cal.4th 274

Participants

- Panel: two or three members
 - If two panel members, at least one must be a commissioner
 - If three panel members, at least two must be commissioners
- Inmate
- **Inmate Counsel**
- A District Attorney representative
- Victim and/or Victim's Next of Kin

Additional Participants / Attendees

Participants

- ▣ Interpreter (if Inmate needs)
- ▣ Victim or Victim's next of kin representatives

Attendees

- ▣ Observers
- ▣ Media
- ▣ Two Correctional Officers

Prisoner's Rights (15 CCR 2245-56)

- ❑ **Attorney representation**
- ❑ Notice / Central File review / Response to contents
- ❑ Attend hearing and speak on his or her own behalf
- ❑ Present relevant documents
- ❑ Impartial hearing panel
- ❑ Request postponement, waiver, stipulation, continuance
- ❑ Assistance (ADA, staff, language interpreter)
- ❑ Copy of transcript and decision

Parole Grant

PC 3041

PC 3041.5

In re Lawrence

15 CCR 2281

15 CCR 2402

- ❑ Panel gives reasons in decision
- ❑ Calculates term
- ❑ Imposes special conditions of parole (if any) *People v. Lent* (1975) 15 Cal.3d 481, 486
- ❑ Reviews parole plans

Parole Denial

PC 3041

PC 3041.5(b)(3)

PC 3041.5(d)

- ❑ Panel states reasons on the record
- ❑ Makes recommendations to the inmate
- ❑ Imposes denial length (15, 10, 7, 5, 3 years)
- ❑ Advises inmate of Petition to Advance process for an earlier hearing



Youth Offender Parole Hearing

Youth Offender Hearing (PC 3051)

A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense.

Youth Offender Hearing

Very similar to a regular parole suitability hearing.
The differences are:

- Timing of hearing (PC 3051(b))
- the Board shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. (PC 4801(c))

Flowchart for Youth Offenders



Included in your materials is a flowchart that shows the reasons why an inmate who committed an offense before age 18 would be qualified or disqualified under the law from receiving consideration by the Board as a youth offender.



Progress Hearings

After a lifer has received a future parole date

When

- A progress hearing occurs if an inmate receives a parole grant at a suitability hearing and his parole release date is calculated to be a date in the future.
- He may receive progress hearings to advance his parole release date.

The progress hearing panel can:

15 CCR 2269

15 CCR 2290

15 CCR 2410

- ☐ Award additional post conviction credit, or
- ☐ Refer the matter en banc for consideration of rescission if the inmate's behavior has been poor, or
- ☐ Affirm the current date "as is"

Participants

- Panel: two commissioners or one commissioner and a deputy commissioner
- Inmate
- **No attorney representation**

Prisoner's Rights (15 CCR 2245-55)

- ❑ Notice of the Hearing
- ❑ Review of Central File / Response to contents
- ❑ Attend hearing, speak on his own behalf
- ❑ Present relevant documents
- ❑ Impartial hearing panel
- ❑ Assistance (ADA, staff, language interpreter)

Penal Code section 3000.1

A lifer has violated parole

Penal Code 3000.1 Hearing

PC 3000.1

Proposed
Regulations

15 CCR 2275

15 CCR 2276

If a lifer inmate is paroled, violates his parole, and a court revokes his parole, a revocation hearing is held in the court.

For certain life term inmates, they are returned to CDCR custody and a Penal Code section 3000.1 hearing is held.

When PC 3000.1 applies

- If parole is revoked for a parolee sentenced to life imprisonment for 1st or 2nd degree murder, offense date on or after January 1, 1983, or
- If parole is revoked for a parolee sentenced to life in prison for specified sex crimes against minors, offense date on or after September 9, 2010.

Court Revocation then PC 3000.1

Court Revocation

County court holds revocation hearing to determine if sufficient evidence to support to charges. Parolee has opportunity to defend himself against charges.

PC 3000.1 Hearing

After revocation hearing, for certain life term inmates, Board then holds a PC 3000.1 hearing, to determine the sentence for the parole violation.

Initial PC 3000.1 Hearing

Board options:

1. Deny parole (retain the inmate in custody), or
2. Determine the inmate does not pose a current risk of dangerousness and grant parole.

Subsequent 3000.1 Hearing

After the initial 3000.1 hearing, the inmate receives annual subsequent hearings.

Hearings are conducted as regular suitability hearings except no need to set a denial length for a denial – the denial length is one year.



Medical Parole Hearing

Medical Parole (PC 3550)

A prisoner permanently medically incapacitated with a medical condition that renders him or her permanently **unable to perform activities of basic daily living**, and results in the prisoner requiring **24-hour care**, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole if the **Board of Parole Hearings** determines that the conditions under which the prisoner would be released would not reasonably pose a threat to **public safety**.

Medical Parole

PC 3550

The Board shall make an independent judgment regarding whether the conditions under which the inmate would be released pose a reasonable threat to public safety, and make written findings related thereto.

Medical Parole

PC 3550

- The Department of Corrections and Rehabilitation shall complete parole plans (including residency and medical care) for inmates referred to the Board of Parole Hearings for medical parole consideration.
- Board conducts these hearings for inmates serving determinate sentences as well.



Rescission Hearings

When a grant is in question

Reconsidering or Rescinding a Parole Grant

- I. Reconsidering a Parole Grant before it is final
- II. Rescinding a Parole Grant after it is final
 - A. Rescission Hearing based on New Information
 - B. Rescission Hearing based on Fundamental Error
 - C. Rescission Hearing based on a Pending Prosecution



Frequently Asked Questions